

1 1. Defendant DEL MONTE FOODS COMPANY was served with Plaintiffs' 2 Summons and Complaint, asserting federal claims for the first time, and which is the subject 3 of Defendant's removal, on May 7, 2007.

4 2. The removal is based on original jurisdiction pursuant to the provisions of the 5 Class Action Fairness Act (CAFA) 28 U.S.C. § 1332(d)(2).

6 3. All of the requirements for removal under CAFA exist in this case. Minimal 7 diversity exists from the face of the complaint because it is alleged on pages 6-7 that Plaintiff 8 is a resident of Nevada and that defendant Wal-Mart Stores, is incorporated in Delaware and 9 maintains its principal place of business in Arkansas. Furthermore, Menu Foods Inc., is 10 incorporated in New Jersey with a its principal place of business in Ontario, Canada; Del 11 Monte Foods is incorporated in Delaware and maintains its principal place of business in San 12 Francisco, California; and Sunshine Mills is incorporated in Delaware with its principal 13 place of business in Alabama.

14 4. The allegations of the Complaint reveal that there are at least 100 members of 15 the plaintiff class because the complaint alleges that the multiple brands of dog food at issue 16 were each sold by Wal-Mart in all 50 states.

17 5. That the combined claims of the plaintiff class exceed \$5,000,000 is also 18 determinable from the face of the complaint. More specifically, paragraph 22 alleges that "it 19 is impracticable to bring all members of the class before the Court. Plaintiff estimates that 20 there are thousands of class members geographically spread throughout Nevada and millions 21 of class members, geographically spread throughout the United States." Grossman Aff., 22 Exhibit "A". Even assuming that each class member only purchased one container of the 23 allegedly mislabeled pet food, CAFA's amount in controversy would be met.

24 6. These same allegations of paragraph 22 of plaintiff's Complaint also establish 25 that this case does not fall within the "home state" exception to CAFA which requires that 26 more than two thirds of the class members reside in the home state (in this case Nevada) or 27 the "discretionary abstention" provision, which allows the federal court to abstain if at least 28 one third of the class members reside in the state and the primary defendants are citizens of

1 the state in which the action was filed. See 28 U.S.C. 1332(d)(3) and (4). As stated, the
 2 plaintiff's Complaint itself states that whereas there are millions of class members across the
 3 country, only several thousands of these persons reside in Nevada.

4 7. On all of these bases, the action is removable under CAFA and 28 U.S.C.
 5 §1441(a).

6 8. Defendant removed this action to the above entitled Court within 30 days of
 7 receiving Plaintiffs' Complaint.

8 9. Del Monte Foods is aware only that Menu Foods was served and is informed
 9 and believes Menu Foods was filing its own Notice of Removal in lieu of joining.

10 10. This removing Defendant lacks knowledge of whether the other defendants
 11 have been served. A defendant who has been served need not seek out and notify
 12 codefendants who have not been served to ask them to join in the removal. [See *Gossmeyer*
 13 *v. McDonald* (7th Cir. 1997) 128 F3d 481, 489]

14 DATED: May 31, 2007

COZEN O'CONNOR

16 By: Dawn J. Grossman
 17 Dawn J. Grossman
 18 Nevada Bar No. 6328
 19 COZEN O'CONNOR
 20 Suite 1610, 501 West Broadway
 21 San Diego, CA 92101
 22 Telephone: 619.234.1700
 23 Toll Free Phone: 800.782.3366
 24 Facsimile: 619.234.7831

25 Designation For Service Only:
 26 Delanoy, Schuetze, McGaha & Provost
 27 601 South Rancho Drive, Suite C-20
 28 Las Vegas, NV 89106
 Attorneys for Defendant
 DEL MONTE FOODS COMPANY

SAN_DIEGO\363676\1 203406.000